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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Amendment of the Commission's Rules )  
To Permit Flexible Service Offerings )  
in the Commercial Mobile Radio Services )

WT Docket No. 96-6  
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COMMENTS OF COMCAST CORPORATION

Comcast Corporation ("Comcast"), by its attorneys, hereby submits its comments on the Commission's Notice of Proposed Rulemaking in the above captioned rulemaking proceeding.<sup>1/</sup> As the wildly successful personal communications service ("PCS") auctions are demonstrating, the wireless communications business is poised for spectacular growth. Competitive PCS, cellular and wide-area specialized mobile radio ("SMR") technologies can bring new services to more consumers if the Commission continues its competition-friendly regulatory policy towards commercial mobile radio services ("CMRS"). Comcast supports the Commission's proposal to allow the market for communications services to determine the most efficient use of broadband CMRS spectrum, and believes the Commission should clarify that all auxiliary services provided by mobile services licensees are within the definition of "mobile service" without issuing a Notice of Proposed Rulemaking. If, however, the Commission chooses to address the scope of

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<sup>1/</sup> See Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services, Notice of Proposed Rulemaking, WT Docket No. 96-6 (released January 25, 1996) ("Notice").

CMRS, it must do so without allowing incumbent monopoly local exchange carriers ("LECs") to evade state regulation under the guise of providing an "integrated" CMRS-wireline network.

**I. A BROAD DEFINITION OF CMRS IS CONSISTENT WITH THE BUDGET ACT, PRIOR COMMISSION DECISIONS AND CURRENT COMMISSION GOALS.**

**A. CMRS Licensees Already Have Ample Guidance on the Issue of the Services They Can Provide.**

In the Notice the Commission states "[o]ur current rules for CMRS services allow licensees to provide all forms of mobile services, including local loop services that are mobile in nature. In addition, broadband CMRS providers may provide some forms of fixed service subject to certain limitations."<sup>2/</sup> The Commission has consistently given CMRS licensees wide latitude to provide all types of communications services, both fixed and mobile.

All prior Commission decisions in this area have broadly construed the ability of mobile services licensees to provide fixed services along with their mobile services offerings. Cellular licensees are permitted to provide fixed services as "incidental" services as long as the Commission receives proper notification.<sup>3/</sup> PCS licensees are also permitted to provide fixed services and have consistently stated their intention to do so. Comcast, for example, filed a request for a PCS pioneer preference license in May 1992 that discussed Comcast's plans to provide PCS trial users with a service that could be used at work, in transit, or at "any location in the country where cellular service exists."<sup>4/</sup> Indeed, it was because PCS technology is regarded

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<sup>2/</sup> Notice at 4.

<sup>3/</sup> 47 C.F.R. § 22.323.

<sup>4/</sup> See Comcast PCS Communications, Inc. Application for Pioneer Preference for

as a possible alternative to the wireline switched network that the Commission held in its regulatory parity order that all auxiliary services provided by mobile service licensees would be considered in the definition of "mobile" service by such carriers.<sup>5/</sup> Further clarification that PCS and other CMRS technologies could be used for fixed service offerings came in a letter in which Commission staff stated that the definition of PCS (and thus the definition of CMRS) comprehended a wide range of services and technologies "including fixed services ancillary to or in support of the provision of a wide range of portable and mobile wireless services and new and creative applications."<sup>6/</sup>

Given the record on this issue, Comcast fails to appreciate why "carriers are hesitant to take advantage of that flexibility without further guidance from the Commission."<sup>7/</sup> If, however, the Commission believes that making a formal statement concerning CMRS provision of fixed services and changing the Table of Frequency Allocations will facilitate flexible use of CMRS spectrum, Comcast supports the Commission subject to the concerns expressed below.

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4/ (...continued)

Personal Communications Service, Request for Award of Pioneer Preference, Gen. Docket No. 90-314 (filed May 4, 1992) at 16.

5/ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1441, 1424 (1994) (emphasis added).

6/ Letter to A. Thomas Carroccio, Esquire from Ms. Regina M. Keeney, Chief, Wireless Telecommunications Task Force, Federal Communications Commission, (dated November 15, 1994).

7/ Notice at 5.

**B. Any Regulatory Definition of "Wireless Local Loop" Should Be Avoided; The Commission Should Allow CMRS Licensees to Use CMRS Spectrum to Provide Mobile, Fixed and Mixed Communications Services.**

The market should determine how CMRS spectrum is used. If consumers want two-way broadband wireless communications services, CMRS spectrum will be used to meet consumer demand. If the market demands a different use for CMRS spectrum, whether voice, data, broadband or narrowband, CMRS licensees will be motivated to meet that need. The Commission should not pre-judge the market and evolving CMRS technology by placing artificial restrictions on CMRS spectrum use, and thus should allow CMRS licensees to provide mobile, fixed and mixed services without restriction.

If the Commission makes the pro-consumer decision to allow CMRS licensees maximum flexibility to use their spectrum as the market demands, a definition of "wireless local loop" as proposed in the Notice is unnecessary. CMRS licensees are selling flexible solutions to meet changing communications needs and want the ability to provide mixed services, not exclusively fixed services. A licensee may, for example, offer a service in which a customer has one telephone that can be used anywhere, either on a "fixed" basis at home or in the office or on a "mobile" basis elsewhere. Depending on the customer, and depending on the customer's needs on any particular day, use of that telephone may be primarily "fixed", primarily "mobile", or "mixed". As technology changes, the methods used to provide customers with "mixed" services may change, and any definition of "wireless local loop" will needlessly inhibit the flexibility

CMRS licensees should have to provide consumers with alternatives to the wireline switched network.<sup>8/</sup>

If, however, the Commission determines that CMRS spectrum use should be limited, it should allow CMRS spectrum to be used for traditional mobile services and for all services that are or may be substitutes for any service provided by a local exchange carrier over its wireline network. Such a rule is the narrowest rule that could be adopted if the Commission intends to ensure that broadband CMRS providers "be able to offer the equivalent of local exchange service."<sup>9/</sup> Technology is changing rapidly, and CMRS regulatory policies must facilitate competition with incumbent local exchange carriers to the greatest extent possible. Any limitation on CMRS spectrum use must be technology and service-neutral or risk becoming quickly obsolete.<sup>10/</sup>

**II. ANY RULE CHANGES SHOULD RECOGNIZE THE JURISDICTIONAL SEPARATION BETWEEN THE EXCLUSIVE FEDERAL JURISDICTION OVER CMRS AND THE CONCURRENT JURISDICTION OF THE COMMISSION AND STATES OVER LOCAL EXCHANGE SERVICE.**

Consistent with the spirit and law embodied in the Telecommunications Act of 1996 (the "Act"), the Commission states that this Notice is intended to "enhance competition" and "promote the development and deployment of new and innovative wireless telecommunications

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<sup>8/</sup> The Commission proposes to define "wireless local loop" as the path between the subscriber and the first point of switching or aggregation of traffic. Notice at 6. Comcast can discern neither business nor policy reasons to define the term. Consequently, it recommends that the Commission decline to do so.

<sup>9/</sup> Notice at 7.

<sup>10/</sup> If the Commission adopts a rule in this area it must be technology neutral and apply to CMRS broadband technologies equally.

networks."<sup>11/</sup> The proposals in the Notice could, however, allow local exchange carriers to do an end-run around the pro-competition policies embodied in the Act by allowing the LECs to claim that their "integrated" CMRS and wireline networks are not subject to the market opening provisions of the Act. Such a result would be devastating to emerging local exchange competition, thus causing the Notice to have exactly the opposite effect from what the Commission intends.

Comcast agrees with the Notice's observation that the ability of a carrier to offer consumers a "menu" of fixed and mobile services adds value to a carrier's mobile services offerings.<sup>12/</sup> CMRS licensees will want to use integrated facilities to offer "mixed" services, and the Commission is correct to propose that these mixed services be regulated as an integral part of CMRS. The Notice fails to distinguish, however, between CMRS licensees able to leverage established wireline networks and CMRS licensees without established wireline networks. For example, six of the seven Regional Bell Companies hold cellular licenses within their wireline service areas, and Pacific Bell and affiliates of BellSouth and Southwestern Bell hold PCS licenses within their wireline service areas. If these companies offer "interconnected, for-profit mobile service to the public on licensed CMRS spectrum," will the integrated wireline and mobile networks be treated as "an integral part of the CMRS services" for regulatory purposes?<sup>13/</sup>

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<sup>11/</sup> Notice at 16.

<sup>12/</sup> Notice at 12.

<sup>13/</sup> See Notice at 12 ¶ 20.

In order to prevent LEC attempts to "bootstrap" wireline local exchange services out of the state regulatory purview via the federal preemption over CMRS, the Commission must declare that wireline services and obligations of incumbent local exchange carriers are not vitiated by provision in association with CMRS. Otherwise LECs could evade state regulation of local exchange service and jeopardize state ability to impose obligations consistent with the public interest on the incumbent LECs. Neither circumstance is consonant with Section 2(b) of the Communications Act of 1934.<sup>14/</sup> Consequently, the Commission must adopt a bright-line rule establishing that all wireline services provided by entities that are either Tier I LECs or that are "Bell operating companies" ("RBOCs") as defined by the Telecommunications Act of 1996 will not be treated for regulatory purposes as an "integral part" of any CMRS services provided by those entities. Without such a bright-line rule the Commission would have to institute another proceeding and work through a series of difficult issues such as determining what integration is, how it operates, and how much integration is required before a CMRS-wireline network is "integrated" such that the wireline network is auxiliary to the CMRS network for regulatory purposes. Such a proceeding would create extreme regulatory uncertainty, the very problem the Commission wants to avoid in this docket, and thus should be resolved by the establishment of a bright-line rule.

Further, to keep the state and federal regulatory arenas separate, the Commission should impose structural separation on in-region incumbent LEC provision of CMRS. As Comcast has discussed in the past, structural separation of LEC wireless and wireline services is the

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<sup>14/</sup> See, e.g., Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986).

regulatory tool that will best promote a competitive wireless marketplace.<sup>15/</sup> Structural separation is the simplest method of keeping state and federal arenas separate and the best method of promoting wireless competition. Structural separation is simple to administer, does not require complex accounting manuals and continual regulatory oversight, and will not inhibit LEC ability to compete for customers in the wireless market.<sup>16/</sup> As new wireless competitors do not also have ubiquitous wireline telephone service networks, LEC complaints that structural separation will not allow the LECs to compete on an "equal footing" with their competitors are ludicrous.<sup>17/</sup>

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<sup>15/</sup> See, e.g., Letter to William E. Kennard, Esquire, General Counsel, Federal Communications Commission from Werner K. Hartenberger, Dow, Lohnes & Albertson (dated January 18, 1996). As stated in that letter, until the Commission resolves the issue of structural separation for in-region incumbent LEC CMRS via a Notice and Comment rulemaking proceeding, the Commission should not take action on any of the LEC Section 22.903 waiver requests. Id.

<sup>16/</sup> The LECs currently enjoy phenomenal success with their separate cellular entities despite LEC arguments that structural separation is hindering LEC attempts to compete. See, e.g., "Ameritech Posts Sharp Gain in Annual Profit and Revenues on Wireless Growth," Communications Daily, January 17, 1996 at 5 ("Cellular business soared 46% to 1.9 million customers. . . ."); "SBC Profit, Without Charges, Rises 11.5%, Driven by Cellular, New Lines," Communications Daily, January 18, 1996 at 5 ("Cellular rose 22%, adding 670,000 through internal marketing and acquisitions. . . . Cellular cash flow increased 36.3% and passed \$1 billion for full year."); "BellSouth Income Climbs 8.5% Without Accounting Charge, Trails Some RHCs," Communications Daily, January 23, 1996 at 5 ("BS added 302,900 cellular customers, 32% improvement, to end year with 2.8 million."); "Bell Atlantic and NYNEX End Year With Double-Digit Gains on Cellular Growth," Communications Daily, January 24, 1996 at 7 ("Joint cellular venture with Nynex had record 43.4% growth for year, including 383,000 subscribers in 4th quarter, and had 3.36 million total customers -- highest in industry.").

<sup>17/</sup> Indeed, the new Act allows the LECs to joint market CMRS and wireline services under rules the Commission plans to establish this summer, thereby resolving any LEC concern that they will not be able to offer competitive "mixed" packages to customers. Telecommunications Act of 1996, Section 601(d).



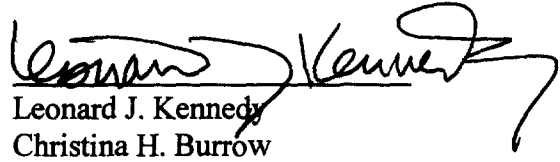
If the Commission adopts a rule in this proceeding establishing that fixed services can be offered by CMRS licensees on an integrated basis with mobile services offerings, the Commission must ensure that the rule does not permit incumbent LECs to evade state regulation through the assertion of federal jurisdiction over integrated wireline-CMRS networks. A bright-line test that excludes Tier I and RBOC entities from providing "integrated" CMRS and wireline services and a requirement of structural separation for in-region incumbent LEC provision of CMRS are necessary to protect the emerging wireless marketplace.

Competition for local communications services will be promoted in the most effective, efficient manner if the Commission allows the market to determine CMRS spectrum use. While Comcast believes that CMRS spectrum will be used to provide mixed fixed and mobile two-way voice and data communications services, any regulatory attempt to pre-judge the market and the technology will only harm consumers. Comcast supports the adoption of a broad policy toward CMRS spectrum use, but urges the Commission to ensure that any policy adopted include safeguards to prevent anti-competitive incumbent LEC abuse. At a minimum, to prevent incumbent LEC attempts to evade state regulation, all RBOCs and Tier I LECs should be prohibited from providing wireline and CMRS services on an integrated basis. The Commission should also impose structural separation on in-region incumbent LEC provision of CMRS. Structural separation would be consistent with the pro-competition policies of

the Telecommunications Act of 1996 and would enhance the vibrancy of the wireless communications marketplace.

Respectfully submitted,

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March 1, 1996